

**SAUK COUNTY BOARD OF ADJUSTMENT**  
**January 22, 2009 Session of the Board**

**PRESENT:** Bruce Duckworth, Chair  
Richard Vogt, Vice Chair  
Robert Roloff, Secretary  
Halsey Sprecher  
Linda White

**ABSENT:** None.

**STAFF PRESENT:** Gina Templin  
Dave Lorenz

**OTHERS PRESENT:** See individual appeal files for registration appearance slips.

Chair Duckworth called the session of the Sauk County Board of Adjustment (BOA) to order at approximately 9:00 A.M. The Chair introduced the members of the Board, explained the procedures and the order of business for the day. The staff certified that the legally required notices had been provided for the scheduled public hearing. The certification of notice was accepted on a motion by Vogt, seconded by Roloff. **Motion carried 4-0, White absent at this time.**

The Board adopted the agenda for the January 22, 2009 session of the Board on a Motion by Sprecher, seconded by Vogt. **Motion carried 4-0, White absent at this time.**

Motion by Vogt, seconded by Roloff to adopt the December 18, 2008 minutes. **Motion carried 3-0, with White absent at this time and Duckworth abstaining.**

**COMMUNICATIONS:**

Roloff advised that he had contact with Fred Hartley via telephone and suggested he attend the meeting rather than discuss possibly hearings during that contact.

**APPEALS:**

- A. Doug Hill (SP-01-09) requesting a variance to authorize an addition to a shed as built within the minimum road setback.

Chair Duckworth ruled that the requested variance is an area variance.

Dave Lorenz, Environmental Zoning Technician, appeared and gave the history and background of the request as well as photos and a video of site. He then recommended conditions to be placed on the appeal if the request were approved.

Roloff asked about the Town Acknowledgment form and the meeting would be held on the 7th of January. Lorenz stated he has not heard from the Town relating to that meeting.

Duckworth asked about a map showing dimensions. Lorenz stated that based on the CSM, the addition seems to be at least 42 feet back from the edge of the building that seems to be on the right of way line.

Duckworth confirmed that the reason this request is here is because it is located in the shoreland district. Lorenz confirmed there is a pond located near the property that puts this into the shoreland district.

Roloff asked if the pond connects up to Lake Wisconsin. Lorenz stated he did not believe so.

Doug Hill, applicant, appearing in favor of the request. Duckworth advised of the 3 requirements that must be testified to for the Board to decide on the variance.

Hill provided history of the property and the use of the shed in question. He stated that the addition will match the original barn, as well as the addition being further away from the road than the original building. He does not feel safety is an issue because the addition is further from the road than the shed.

Duckworth asked if there are other buildings in this area that are close to the road. Hill stated there are not, as the farm was built in 1906 and is the only building along that road which is that close to the road. He also addressed the pond that is located, as it is a cattle pond/retention pond.

Duckworth asked about the permit. Hill stated he received a permit from the Town Clerk, as no one knew the property was located in the shoreland protection district. He also stated that the County was unaware that it was shoreland until it was looked into further.

Roloff asked about the pond. Hill explained it was a pond used by Devils Lake.

Vogt asked about the permit. Hill stated he did not go to the county, but to the Township and was advised there that he did not need a county permit, and received one from the Township.

Duckworth confirmed that all the building addition is done away from the road. Hill stated that was correct and no work will be done on the original building, as the addition was built to match the original building.

Vogt asked about other improvements and if it is an active agricultural farm. Hill explained that the previous owner sold chunks of property to several property owners and he only owns the 6 acres that the buildings and pond sits on.

Roloff asked about the hardship if the Board did not grant the variance. Hill stated that the hardship would be removing the addition, as he received a permit from the Town and built the building with the understanding it was legal.

Harry Hunt, appearing in opposition, stated he does not feel there has been a valid permit issued for this building and he was the one who advised the Township of it being illegal. He also suggested that 18 feet of that addition is in the setback. He spoke of needing a permit for the variance.

Duckworth confirmed that he is talking about the Merrimac ordinances. Hunt stated that was correct and that he did not know about the County ordinance. He also spoke about improvements made by Devils Head that created the pond.

Roloff asked if he is stating that a permit was or was not issued by the Township. Hunt stated that he feels there was no permit because he needed a variance and that the building is ugly.

Doug Hill, reappearing. Roloff asked about receiving a permit from the Town of Merrimac and there was anything that led him to believe that the permit was not valid. Hill stated that he did receive a permit from the Town and both believed that the permit was valid.

Duckworth asked if the video's were taken at the site and if he was able to see the permit. Lorenz stated he did not get that close to the building.

Duckworth asked if it was outside of the shoreland district, this would not matter. He also asked if we deal with the Town of Merrimac ordinance. Lorenz stated that if it was not shoreland, the County would not be dealing with is, as well as the County does not deal with the Town of Merrimac ordinance.

Harry Hunt, reappearing, stated that it doesn't matter how close to the road the machine shed is and that there is a new structure in the setback and feels the setback for the original shed does not matter. He asked what happens if the County provided a variance to build in the setback, what happens if the road gets widened.

Duckworth spoke of the issues between the Town of Merrimac and their zoning.

Seeing as no one else wished to speak, Chair Duckworth closed this portion of hearing at 9:30 a.m.

The Board discussed the request.

Vogt spoke of the Township having an ordinance that may be as restrictive as the county ordinance for a setback, and is trying to figure out how the permit came about. Duckworth stated the board does not need to decide that.

Roloff spoke of an area variance and the hardship for an area variance and they should consider what the purpose of the ordinance was. In reviewing 8.01(3)(a), the statement and purpose of the ordinance, and how it may relate to this request. After reading though this section, he can not see how the variance could not be approved.

Duckworth asked if the variance would cause harm or be contrary to public interest. Roloff stated the addition is built on the backside of the building and is not a safety hazard, as the original building is closer to the road.

Roloff stated if the road was widened and the purchase of that property would not be in the public interest.

Sprecher spoke of the value of an old building being decreased by adding to it. He also spoke of a non-conforming building and the pond being a non-issue at the present time.

Duckworth spoke of a previous case where the Board indicated that when the variance was given, if the road was widened and the building needed to be torn down, the County would not have to pay for it.

Roloff stated they would not be here if it was not for the Shoreland Protection and referred the Board to the purpose of that ordinance and its purpose is not about the highway.

Vogt spoke of the 3 criteria and the request being a self-inflicted hardship.

Sprecher stated that if the Town of Merrimac felt they could have corrected the issue if they believed they issued it in error and the lack of their appearance here today makes him believe they did not feel they acted in error.

Duckworth agreed with Roloff in the fact that they are here under the Shoreland ordinance and does not feel that it will negatively affect any items under the shoreland district.

Motion by Roloff, seconded by Sprecher, to approve the request with the conditions supplied by Planning & Zoning, based on the variance request not conflicting with the purpose or intent of the Shoreland Protection Ordinance. **Motion carried 3-1 with Vogt in opposition - White abstaining.**

White in attendance at this time.

- B. Ron Silverthorn (SP-02-09) requesting a special exception permit to authorize modification of a filling and grading permit granted in 2005.

Dave Lorenz, Environmental Zoning Technician, appeared and gave the history and background of the request as well as photos and a video of site. He then recommended conditions to be considered on the request if the appeal is approved.

Duckworth asked if the spoil piles were placed in wetlands. Lorenz stated with the snow you can't tell that now, but uncertain with the previous request.

Roloff asked why the request is taking place. Lorenz stated the applicant is asking for a revision to the conditions placed on him in 2005. Roloff confirmed that for reasons by the applicant, he does not want to level out the spoil piles.

White asked if by not leveling out the spoil piles he is in violation of the first permit. Lorenz stated it could be interpreted that way.

Sprecher stated he had 4 years to complete the requirements of his permit.

White asked if this was something the office checked up and determined he did not complete the conditions of the applicant.

Duckworth stated that if they put the piles in the wetlands it is illegal, but if they did not put them in the wetlands, they can modify the permit. Lorenz stated that is correct and does not believe they have been installed in the wetlands.

White asked if there were any photos in 2005 that they can get copies. The Board recessed to receive photos from the 2005 hearing. The Board reconvened.

Lorenz spoke of SP-27-05, photos from that hearing, labeled Exhibit VIII, 1 for this hearing.

Duckworth asked if you could tell from that photograph if the stockpiles were placed in wetlands. Lorenz stated he doesn't believe so, but can not remember from 2005 the stockpiles and wetlands being an issue at that time.

White asked what will happen if the permission is not granted. Lorenz stated that the Board would be making the decision that the original conditions would be in place and the applicant would have to complete the permit due to those conditions.

Roloff asked in 2005 the permit was already dug. Lorenz stated the permit had to do with the dredging of the pond and the disbursement of the spoil piles. Roloff stated that the Board was concerned with runoff onto neighboring properties and distributing the soil, leveling and reseeded would prevent runoff and a negative affect to the neighboring property. He asked if there would be a negative affect if the conditions are not done as required in 2005. Lorenz stated he feels that if the piles are seeded, he doesn't believe it would have a negative affect.

Steve Sorenson, Planning & Zoning, appearing. Duckworth asked if the existing spoil piles were originally piled in a wetland. Sorenson stated that he does not believe the spoil piles were placed in a wetlands, as the wetlands are believed to be below the highwater mark of that pond.

Duckworth asked if he would have an issue, based on environmental affect, with the spoil piles remaining. Sorenson stated he would not have a problem.

Sprecher asked if opening those piles up and spreading now would create more problems. Sorenson stated opening it up could cause erosion, but that would be all speculation.

Sprecher then noted that the applicant had 1 year to complete this project when issued in 2005, rather than 4, as he had earlier stated.

Ron Silverthorn, applicant, appearing in favor of the request, stated that he is asking for an exemption from the original special exception permit and provided some background on the project. He also confirmed that there is grass established on the spoil piles and is a great nesting habitat for wildlife.

Duckworth asked if they were deposited on a wetland to start with. Silverthorn stated they were not placed on wetlands, to the best of his knowledge.

Duckworth confirmed that he is not looking to do additional excavating but to leave it the way it is now. Silverthorn stated that is correct.

Seeing as no one else wished to speak, Chair Duckworth closed the public portion of the hearing at 10:03 am.

Vogt stated that the only reason you level a spoil pile is to stabilize it faster than having a large pile of dirt, but this site is already completely stable.

Motion by Vogt, seconded by Sprecher, to approve the request for a special exception permit to modify the conditions of a previous request, with the conditions listed by Planning & Zoning. **Motion carried 5-0.**

C. US Cellular (SP-03-09) requesting a special exception permit to authorize the location of a proposed cellular communication tower.

Dave Lorenz, Environmental Zoning Technician, appeared and gave the history and background of the request as well as photos and a video of site. He then recommended conditions to be considered on the request if the appeal is approved.

Duckworth asked about the request for the screening waiver. Lorenz stated that in this case, the only visual impact this tower will have is for the Hartleys and the only thing you could possibly screen is the structures inside the fenced in area, which he doesn't believe would affect any other neighboring landowners.

Tom Bethea, agent/applicant, US Cellular, appearing in favor of the request, stated the request is made based on the need to improve wireless coverage in the area. He also stated that there is not an alternate structure to place antennas on, as well as constructing the tower for allowing numerous co-locators on the tower. He also spoke of each geographic area having a certain number of FCC licensees, and the applicant not having a problem with the Board placing a requirement to allow a minimum/maximum number of spaces for co-locators. He also spoke of the tower being placed on the end of a dead end road, making for minimum impact to adjacent property owners as well as traffic.

Duckworth asked about Exhibit II,22 and what the difference is between the green and red. Bethea stated that the green are proposed towers and the red are currently in operation, however they are not all US Cellular towers.

Duckworth asked about the exhibit talking about a “reference copy” and speaking of a tower in Plateville for the FCC. Bethea stated that he believes the legal department provided a copy of reference and not the actual license for the Board.

Duckworth confirmed that they have spoken to the Town Board. Bethea stated they have been favorably endorsed.

Duckworth asked about the engineering for coverage purposes. Bethea stated that is correct because of the hilltops and vegetative cover surrounding the site.

Fred Hartley, property owner, appearing in favor of the request, stated that it is located on Oak Hill Lane, not Oak Hill Road. He also presented Exhibit X, a document showing signatures of all neighboring land owners in favor of the request.

Duane Brooks, Town of Dellona Chair, appearing in favor of the request stated that the Town’s biggest fear of the tower is that they don’t get it.

Duckworth asked if there was a hearing at the town board. Brooks stated that they did discuss the application at Town meetings, and the location is away from anything environmentally protected.

Seeing as no one else wished to appear, Chair Duckworth closed the public portion of the hearing at 10:22 a.m.

White feels it is a good choice of location and is something that is needed and will contribute to the public safety and well-being.

Roloff suggested that US Cellular will allow co-location to the design limit of the Tower. The Board requested to hear from the applicant on the co-location issue. Bethea reappeared and stated that most ordinances if they address the issue will say 2 or 3 more.

Duckworth stated 23.08(3)(b) addresses the co-location for at least 3 additional users.

Motion by White, seconded by Roloff , to approve the request for a special exception permit with the conditions listed by Planning & Zoning with the waiver of screening, as required by ordinance. **Motion carried 5-0.**

D. T&T Earthworks/Jaech, (SP-04-09) requesting a special exception permit to renew a permit granted in 2002 for a mineral extraction site.

Dave Lorenz, Environmental Zoning Technician, appeared and gave the history and background of the request as well as photos and a video of site. He then recommended conditions to be considered on the request if the appeal is approved.

White asked about conditions #3 and the bond amount. Lorenz explained.

Vogt asked about any complaints or inspections. Lorenz stated the office has not received any.

Duckworth asked about complaints received by the neighbor. Lorenz stated we have not received any.

Todd Denman, T&T Earthworks, agent appearing for the owner, stated their is a need to keep operating in the sand pit.

Duckworth asked if any of the neighbors have talked to him about the operation. Denman stated they have not.

Duckworth asked about the operation of the pit and if it was operated the same way. Denman stated that was correct.

Duckworth spoke of the rules of operation indicating it was only good for 5 years and if the pit has been operated using those rules. Denman stated that he did operate as Labansky's operated prior to him being involved with it.

Duckworth asked if they are at least 50 feet from the property line. Denman stated they are.

Sprecher asked if they have any problems with trespassing. Denman stated not to his knowledge.

White asked what the maximum depth is right now. Denman stated he believes it is 15 feet.

Sprecher asked about any input on the bonding requirement. Denman stated that he is taking care of all that and the \$2,500/acre is correct.

White asked about Exhibit II,3 and the banks are no more vertical than 5 feet and if these are shelved or a straight drop. Denman stated they are sloped, similar to a 2:1 slope.

Seeing as no one else wished to speak, Chair Duckworth closed the public portion of the hearing at 10:47 am.

Motion by Roloff, seconded by White, to approve the request, with a correction to the amount of the bond stating it is \$2,500/acre, with the special exception being nontransferable and issued to T&T Earthworks. **Motion carried 5-0.**

Meeting adjourned.

Respectfully submitted,

Robert Roloff,  
Secretary